

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. Since at least December 1998, [D], minor son of the petitioner, has been in the legal custody, care, and control of the Department of Social and Rehabilitative Services (SRS).
2. On December 31, 1998, following an interview process at Allenbrook Grimes House, [D] was placed in Foster Care with Allenbrook Homes for Youths, Inc. by SRS.
3. SRS pays "Allenbrook Homes for Youths, Inc." Foster Care payments for the care of the petitioner's son [D].
4. Allenbrook Grimes House is a residential institution. [D] has resided at this facility since December 31, 1998, except for visits with his mother. Allenbrook Grimes House provides [D] with lodging, meals, clothing, money for incidentals and an allowance.

5. [Name], of Allenbrook Grimes House, states that [D] ate meals at his facility as set forth in the attached letter which is marked as Exhibit 1.

6. [Name] also states that even though [D] has been in SRS custody, he has had periodic visits and vacations with his mother, sometimes for as many as 18 days in a month, as set forth in the attached letter which is marked as Exhibit 2. Neither party disputes [Name's] statements contained in Exhibits 1 and 2.

7. Since his placement at Allenbrook Grimes House [D] has attended the South Burlington public schools.

8. On school days, [D] receives lunch through the school program at no cost.

9. When the Department became aware that the petitioner's son had been placed in foster care, it assessed a Food Stamp overpayment for the petitioner.

10. Since the petitioner disputed the Department's conclusion that she had been overpaid, she appealed and requested continuing benefits.

11. By subsequent agreement of the parties, based on [D's] less frequent visits with his mother in recent months, the petitioner no longer receives Food Stamp continuing benefits for [D], and her household's ongoing Food Stamp grant is being recouped at the rate of 10% per month. The amount of the Food Stamp overpayment assessed by PATH due to [D's] contested household status was at all stages of this dispute, \$56/month. The total overpayment assessed by the Department for the time period from December 1998, through July, 2000, was \$1,120.00. By letter dated 10/24/00, the Department agreed to reverse with regard to the month of December, 1998, leaving a total claimed overpayment of \$1,164. The petitioner contests the assessment of the overpayment only with respect to the 8 months identified in Exhibit 1 as months in which [D] ate 50% or more of his meals elsewhere than at Allenbrook Grimes House (either at school or at his mother's home).

ORDER

The Department's decision is reversed for the months the petitioner's son did not eat over 50% of his meals at Allenbrook Grimes House.

REASONS

The Food Stamp regulations at FSM § 273.1(a) define "households" as follows:

A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

- (1) An individual living alone;
- (2) An individual living with others but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

The issue in this case is whether the petitioner and her son can be considered to have been "living together" within the meaning of subparagraph (3) of the above regulation during any of the months he was placed at Allenbrook. The petitioner argues that during any month in which her son ate less than 50% of his meals at Allenbrook he could not be considered a "resident" of that facility for Food Stamp purposes; and that because he ate a substantial number of his

meals those months while he was staying with the petitioner he should be considered to have been a member of the petitioner's Food Stamp household during those months.

As support for her argument the petitioner cites the following provision in FSM § 273.1(e):

Residents of Institutions

1. Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50% of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the program with the following exceptions:. . .

(None of the exceptions listed in the above regulation pertain to the petitioner's son.)

In arguing otherwise, the Department relies on a newly promulgated federal regulation in arguing that as a child in foster care the petitioner's son must be considered a "boarder" for Food Stamp purposes. 7 C.F.R. § 273.1(b)(4) provides as follows:

Foster care individuals.

Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program must be considered to be boarders. They cannot participate in the Program independently of the household providing the foster care services. Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care

services, only at the request of the household providing the foster care.

As the petitioner points out, however, the above regulation does not pertain to the petitioner's son, who has been placed by SRS in an institution, not in a "home of relatives or other individuals". Therefore, by the plain language of the above regulations the rules on "institutions" must be considered controlling in this matter.

The petitioner has shown that during eight of the months in question in this matter her son did not eat 50% of his meals at Allenbrook. It can reasonably be concluded that under FSM § 273.1(e) (supra) he was not a "resident" of that institution during that time for purposes of Food Stamps. Moreover, he spent a substantial amount of time in the petitioner's household during those months, and the petitioner furnished him with a substantial amount of meals during that time. Therefore, it can reasonably be concluded that the petitioner and her son were "living together" during those months within the meaning of § 273.1(a), supra.

If it wished, the agency could further define "institutions" and "foster care". However, there being no conclusive basis in the regulations as they exist to determine that the petitioner's son was not a member of her household

during the months he ate less than 50% of his meals at Allenbrook, the Department's decision that the petitioner was overpaid Food Stamps for those months is reversed.

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